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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ROBERT POOLEY,  
  
Defendant.

CASE NO. 2:21-CR-111 WBS

GOVERNMENT MEMO REGARDING  
SCHEDULING OF THE HEARING REGARDING  
DEFENDANT'S RULE 29 MOTION WITH  
RESPECT TO COUNT 5; [PROPOSED] ORDER

The government is in receipt of the defendant's brief regarding scheduling (Dkt. No. 146).

August 19 is simply the only Monday that the Court is holding calendar in July/August<sup>1</sup> prior to the August 26 sentencing that does not conflict with a pre-arranged out of state trip for one or both government counsel.<sup>2</sup>

Fortunately, August 19 is a fine date. Holding the Rule 29 hearing a week prior to sentencing

<sup>1</sup> A hearing in June is not workable, as defense counsel seems to acknowledge, given the timing of their motion filing and the need for the parties to obtain transcripts, which the government is in communication with court reporters to order.

<sup>2</sup> Via email, after the government advised the date on which the defense had noticed the hearing conflicted with a trip, the Courtroom Deputy graciously provided the two additional dates the Court is currently holding calendar in July: July 8 and 29. Those dates are unfortunately in conflict with booked out of state trips for one or both government counsel, who will be out of town during the following windows: July 1 – 8, July 22 – 26; and July 27 – August 12. Undersigned government counsel also has jury duty (which has already been continued the one permitted time) on July 15, 2024.

1 may indeed productively refresh everyone's memories regarding the case. There is no reason to upend  
2 schedules to hold the hearing sooner, particularly since the Court was already transparent in its post-  
3 verdict colloquy with defense counsel that, while it couldn't stop defense counsel from filing a written  
4 Rule 29 motion with respect to Count Five, it did not think it was going to grant it. And, if the Court  
5 were to grant the motion, that would not cause complications with the PSR (as defense counsel suggests)  
6 since the aggravated identity theft count simply carries a 2-year consecutive additional sentence which  
7 does not impact the other guideline calculation.

8 For these reasons, the government respectfully requests the Court order the following hearing  
9 schedule:

- 10 a) The motion shall be heard on August 19, 2024 at 9:00 a.m.  
11 b) Any opposition to the motion shall be due August 5, 2024.  
12 c) Any reply brief in further support of the motion shall be due August 12, 2024.  
13

14 Dated: June 12, 2024

PHILLIP A. TALBERT  
United States Attorney

16 By: /s/ KATHERINE T. LYDON  
17 KATHERINE T. LYDON  
Assistant United States Attorney

18  
19 **[PROPOSED] ORDER**

20 The above-stated briefing and hearing schedule is ORDERED this \_\_\_\_ day of June, 2024.  
21

22 THE HONORABLE WILLIAM B. SHUBB  
23 SENIOR UNITED STATES DISTRICT JUDGE  
24  
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